

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JAN 19 2011

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

MEGAN S.,	)	2 CA-JV 2010-0092
	)	DEPARTMENT A
Appellant,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 28, Rules of Civil
ARIZONA DEPARTMENT OF ECONOMIC	)	Appellate Procedure
SECURITY, DESTIN C., and ALEXIA C.,	)	
	)	
Appellees.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 18935600

Honorable Suzanna S. Cuneo, Judge Pro Tempore

AFFIRMED

Nuccio & Shirly, P.C.  
By Jeanne Shirly

Tucson  
Attorneys for Appellant

Tom Horne, Arizona Attorney General  
By Jamie R. Heller

Phoenix  
Attorneys for Appellee Arizona  
Department of Economic Security

H O W A R D, Chief Judge.

¶1 Megan S. challenges the juvenile court’s August 2010 order terminating her parental rights to Destin C., born in June 2001, and Alexia C., born in June 2002, based on the children’s out-of-home placement for fifteen months or longer.<sup>1</sup> *See* A.R.S. § 8-533(B)(8)(c). She argues the court erred by finding termination of her parental rights was in the children’s best interests. We affirm.

¶2 To terminate parental rights, a juvenile court must find the existence of at least one of the statutory grounds for termination enumerated in § 8-533(B) and “shall also consider the best interests of the child.” § 8-533(B). Although statutory grounds for termination must be proven by clear and convincing evidence, only a preponderance of the evidence is required to establish that severance will serve the child’s best interests. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). We will affirm an order terminating parental rights unless we can say as a matter of law that no reasonable person could find the essential elements proven by the applicable evidentiary standard. *Denise R. v. Ariz. Dep’t of Econ. Sec.*, 221 Ariz. 92, ¶¶ 9-10, 210 P.3d 1263, 1265-66 (App. 2009). We view the evidence in the light most favorable to upholding the court’s order. *Id.* ¶ 10.

¶3 The Child Protective Services (CPS) division of the Arizona Department of Economic Security (ADES) removed the children from Megan’s care in January 2009 based, inter alia, on her methamphetamine use and her admission she was unable to parent her children because she was unemployed and had no appropriate residence or

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<sup>1</sup>The juvenile court also terminated the parental rights of the children’s father, who is not a party to this appeal.

means of supporting them. ADES initially placed the children with their maternal great-grandparents but ultimately placed Alexia in a foster home and Destin in a group home.

¶4 After a contested severance hearing in July 2010, the juvenile court found Megan had failed to remedy the circumstances resulting in the children's out-of-home placement for fifteen months or longer pursuant to § 8-533(B)(8)(c). Relevant to that finding, the evidence showed Megan had failed to participate substantially in reunification services, had failed to provide all required urinalysis, had continued to use methamphetamine during the time the children were in out-of-home placement, had not completed a substance abuse treatment program, and had failed to visit her children consistently—resulting in her visitation rights being suspended for several months. Indeed, shortly before the severance hearing, Megan requested that her visits be reduced in frequency because she had moved from Tucson to Phoenix to be with her fiancé.

¶5 Megan does not assert the juvenile court erred in finding termination was appropriate under § 8-533(B)(8)(c), but argues only that the court's finding that termination was in the children's best interests was unsupported by the evidence. Relevant to that finding, the court found both children were adoptable and severance would provide the children needed permanency. The court also commented that Megan had abandoned her children to move to Phoenix so that her fiancé and his family could provide for her. The court further noted Megan was not employed, was not pursuing an education, and had “done nothing despite diligent attempts by [ADES] to try to engage her” in parenting her children.

¶6 Megan first argues there was no evidence the children needed permanency, and thus the court’s finding that severance and adoption would provide such permanency does not support its conclusion that termination of her parental rights was in their best interests. We summarily reject this argument. Before ADES took custody of Megan’s children, she had “rarely parented” them, instead leaving them with grandparents and other relatives. And a CPS case manager opined that the “children need[ed] stability in their li[ves]” and that Megan had not demonstrated she was capable of providing such stability. Thus, the evidence amply supported the court’s conclusion that the children would benefit from permanency.

¶7 Megan also asserts the juvenile court failed to address “the bond that the children have with their mother or that they have with each other,” noting that the children had stated through their counsel that they did not want their mother’s parental rights terminated and instead desired that she receive “additional services so she can be reunited with them.” She also observes that the home identified as a potential permanent home for Alexia was not a potential permanent home for Destin and that there was evidence that permanently separating the children was not in their best interests.

¶8 Again, we find these arguments unavailing. First, Megan cites no authority, and we find none, suggesting a juvenile court must explicitly address all potentially relevant evidence in its ruling. Indeed, we presume the court considered the evidence presented. *See Fuentes v. Fuentes*, 209 Ariz. 51, ¶ 18, 97 P.3d 876, 880-81 (App. 2004) (appellate court presumes trial court considered evidence presented); *In re Maricopa County Juv. Action No. JS-3594*, 133 Ariz. 582, 585, 653 P.2d 39, 42 (App.

1982) (“In reviewing the evidence, we are mindful of the fact that the trial court will be deemed to have made every finding necessary to support the judgment.”). Nor does Megan cite authority suggesting that the children’s wishes must govern a juvenile court’s best-interests finding. A child’s wishes may not reflect his or her best interests. Cf. *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, ¶ 11, 995 P.2d 682, 684 (2000) (“Severance of parental rights necessarily involves the consideration of fundamental, often competing, interests of parent and child.”). Additionally, we note that the presence of a statutory ground for termination typically will “have a negative effect on the children,” therefore supporting a juvenile court’s best-interests finding. *In re Maricopa County Juv. Action No. JS-6831*, 155 Ariz. 556, 559, 748 P.2d 785, 788 (App. 1988). Specifically, here, by finding a termination was warranted under § 8-533(B)(8)(c), the juvenile court necessarily found there was a “substantial likelihood that [Megan] will not be capable of exercising proper and effective parental care and control in the near future.”

¶9 Finally, although an adoptive placement was not available immediately for both children, evidence that the children were adoptable and “doing well in their current placements” supports a finding that severance is in their best interests. See *Mary Lou C. v. Ariz. Dep’t of Econ. Sec.*, 207 Ariz. 43, ¶ 19, 83 P.3d 43, 50 (App. 2004) (evidence child adoptable and current placement meeting child’s needs sufficient to find termination in child’s best interest); *In re Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 352, 884 P.2d 234, 238 (App. 1994) (“[A]DES need not show that it has a specific adoption plan before terminating a parent’s rights; [A]DES must show that the children are adoptable.”).

¶10 For the reasons stated, we conclude sufficient evidence supported the juvenile court's finding that severance was in the children's best interests. We therefore affirm the court's order terminating her parental rights.

/s/ Joseph W. Howard  
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ J. William Brammer, Jr.  
J. WILLIAM BRAMMER, JR., Presiding Judge

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Judge